

**Chesapeake Bay Local Assistance Board
Southern Area Review Committee Meeting
Tuesday, February 14, 2006 – 2:00 p.m.
101 N. 14th St. – James Monroe Building
Richmond, Virginia**

DRAFT MINUTES

Southern Area Review Committee Members Present

David C. Froggatt, Chair
Amanda T. Macaulay

Beverly Harper
Gale A. Roberts

Southern Area Review Committee Members Not Present

Michael A. Rodriguez

DCR Staff Present

Russell W. Baxter, Deputy Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Principal Environmental Planner
Beth Baldwin, Senior Environmental Planner
Jakob Helmboldt, Senior Environmental Planner
V'Lent Lassiter, Senior Environmental Planner
Nancy Miller, Senior Environmental Planner
Michael R. Fletcher, Director of Development

Local Government Officials Present

Debra Byrd, City of Richmond
Mark Drumheller, Town of Windsor
Robert Goumas, Suffolk
James McGowan, Accomack County
Leonard Muse, City of Petersburg
Keith White, Henrico County
Jeff Perry, Henrico County

Call to Order and Opening Remarks

Mr. Froggatt called the meeting to order and declared a quorum present. He welcomed Ms. Macaulay as a new member to the Board.

Mr. Froggatt introduced DCR Deputy Director Russell Baxter and Division of Chesapeake Bay Local Assistance Director Joan Salvati.

Ms. Salvati introduced V'Lent Lassiter as the new Senior Environmental Planner for the Northern Neck. Ms. Lassiter will assume the responsibilities of Ms. Beth Baldwin who is moving out of state.

Ms. Salvati said that DCR is in the process of extending an offer of employment to another planner.

Ms. Salvati said that there were two bills in the General Assembly relating to the Bay program.

The first deals with perennial flow and would require localities to use the USGS quad sheets for perennial flow determination. As written the bill would require the designation to extend the entire length of the stream. This bill has been tabled.

The second bill deals with closing the loophole on the silvicultural exemption. The patron withdrew this bill. However, the patron will send a letter to the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services and the Department of Forestry requesting they study the issue to address the concerns such as those raised in Stafford County. Ms. Salvati is a member of the workgroup assigned to study this issue.

Ms. Salvati said that the Department has received a counter proposal from the City of Hampton. The City has offered to reduce their IDA designation by approximately 50%. Staff still has some concerns with the proposal.

Four grants are being prepared for localities to implement buffer restoration projects.

Ms. Salvati called on Ms. Baldwin to discuss two grants to localities for septic pump out.

Ms. Baldwin said that grants have been awarded in the Northern Neck and the Middle Peninsula Planning District to assist localities in the implementation of septic pump out requirements. So far about 50 systems in the Northern Neck and about 48 in the Middle Peninsula have been pumped. The target is approximately 250 systems in each region.

For purposes of clarification, Ms. Salvati reviewed the actions before the Board. Actions are presented for compliance evaluation and for Phase I consistency reviews.

Ms. Salvati said there are two areas of implementation. First localities are required to adopt the Bay ordinances. All 84 localities have now adopted.

Consistency reviews are performed to assess locality compliance with conditions given for the approval of the ordinances and Bay programs.

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Local Program Reviews: Phase I

City of Poquoson - Review of Phase I conditions

Ms. Miller gave the report for the City of Poquoson.

On September 19, 2005 the Board found the City's Phase I program consistent with one recommendation to be addressed by November 30, 2005. The recommendation required the City to eliminate a provision in its Environmental Management Area (EMA) Overlay District that exempted the removal of storm-damaged vegetation from the requirements for vegetation removal in the RPA. This section was deleted on January 23, 2006, and language was added to clarify the requirement for City review and approval of storm-damaged vegetation removal in the RPA. Staff has reviewed the amended language and recommends that Poquoson's Phase I program be found consistent with the Act and the Regulations.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Environmental Management Area (EMA) Overlay District amended by the City of Poquoson on January 23, 2006 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Macaulay

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Surry - Phase I revisions

Mr. Helmboldt gave the report for the Town of Surry. He noted that William Sutherland, Mayor of the Town of Surry, was not present.

The Town Council adopted their revised Bay Act ordinance on February 11, 2003. At the time of the revisions to the Regulations there were no Resource Protection Areas within the Town as a result of the previous RPA designation criteria. As a result, there were a number of elements of the Regulations that were not included in the Town's revised ordinance.

Department staff conducted site-specific determinations for RPA in the Town and determined that RPA did exist within the Town limits. As a result significant changes would have to be made to the Town's Zoning Ordinance to reflect the addition of elements pertaining to RPA which was not previously part of the Town's program under the previous Regulations.

In the process of trying to determine the best course of action to facilitate such major revisions, staff inadvertently failed to send drafted correspondence to the Town of Surry addressing the required changes to their ordinance. Staff recently reevaluated the Town's ordinance and the

required changes and provided the information to the Town of Surry regarding the required changes.

The majority of the changes pertain to textual requirements and are as follows:

- Six recommendations pertain to General Information such as definitions, document references and basic textual amendments;
- Two pertain to RPA Criteria;
- Three pertain to the requirement for administrative and formal exception review processes.

Though staff has noted a number of conditions required for consistency in the Town of Surry's ordinance, a number of them relate to issues unrelated to enforcement and administration of the Town's local program and they are located in areas that are not currently subject to any land use and the buffers are completely intact.

Mr. Helmboldt said that staff believes that the Town's administration and enforcement of RPA development criteria will not be an issue while the ordinance revisions are being made. Additionally, because the Town of Surry is comprised of minimal staff, Mr. Helmboldt offered to draft the revised ordinance for them in order to expedite the process and reduce the amount of correspondence that would otherwise be required to facilitate a thorough understanding of all of the changes that need to be made.

Staff recommends that the Town of Surry's revised Bay Act Ordinance be found consistent with eleven conditions. Staff is of the opinion that the eleven items recommended for consistency should not interfere with the Town's program administration and recommends that the Town of Surry makes these required ordinance changes no later than June 30, 2006.

MOTION: Ms. Macaulay moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the local program amendments adopted by the Town of Surry on February 11, 2003 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60.1 and 2 of the Regulations subject to the condition that the Town of Surry undertake and complete the eleven recommendations in the staff report no later than June 30, 2006.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

City of Richmond - Review of Phase I conditions

Mr. Helmbolt gave the report for the City of Richmond. He recognized Debbie Byrd, Permits & Engineering Services Administrator for the City of Richmond.

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The City of Richmond adopted revisions to their Bay Act ordinance on December 13, 2004.

On March 21, 2005 the Board found the City's ordinance consistent with the Act and Regulations subject to the three recommendations for consistency outlined by staff to be completed no later than September 30, 2005. On July 25, 2005, the Richmond City Council adopted amendments to their ordinance to address two of the recommendations of the Board.

The two recommendations pertained to a date correction and an erroneous code reference. Staff is of the opinion that the City has adequately addressed these two recommendations. The third recommendation that required the City to add the pump-out requirement for septic systems was to have been added to the City's Health ordinance since the Health Department oversees the pump-out requirements, but has not yet been completed.

This change was not coordinated internally by the City and this recommendation was not addressed.

As a result one recommendation remains that:

1. The City must amend their Health and Sanitation ordinance to include the requirement for five-year pump-out, or inspection in lieu of pump-out of all remaining on-site septic systems. Staff is recommending that the remaining condition for pump-out remain in place and that the City be given a deadline of June 30, 2006 to make the required changes.

Ms. Byrd said that the City understands and intends to comply with the recommendation. She noted that the delay was due to staffing vacancies. She said that the City is currently doing the program and that all that remained was the official change of the text in the ordinance.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the local program amendments adopted by the City of Richmond on July 25, 2005 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition that the City of Richmond undertake and complete the one recommendation in the staff report no later than June 30, 2006.

SECOND: Ms. Macaulay

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews: Phase II – Comprehensive Plans

City of Petersburg - Review of previous conditions

Mr. Helmboldt gave the report for the City of Petersburg. He recognized Leonard Muse, Director of Planning for the City.

On March 19, 2001 the Board found the City of Petersburg's comprehensive plan consistent subject to the condition that the City undertake and complete the four recommendations in the staff report. The Board set a deadline of December 31, 2003 for completion of the recommend changes.

The most recent version of the City of Petersburg's comprehensive plan was adopted on February 13, 2001 shortly before that finding and the four conditions were not addressed at the time of those revisions. Staff has met to discuss the four conditions on several occasions over a number of years since then.

The City was planning to contract with a consulting firm to update the City's comprehensive plan and Mr. Helmboldt noted that at today's meeting Mr. Muse had provided him with a Request for Qualifications for a consultant to update the City's Comp Plan.

Mr. Helmboldt stated that the four recommendations addressed three sections of the City's Comprehensive Plan; Shoreline & Stream bank Erosion Control, Public & Private Access to Waterfront Areas, and Redevelopment of IDAs and Other Areas Targeted for Redevelopment.

As a result, staff is of the opinion that the City's comprehensive plan be found inconsistent with the Act and Regulations and that a final deadline of June 30, 2006 be established for full compliance.

Mr. Muse said that the City was aware of the concerns and has made some progress with updating the comprehensive plan. Mr. Muse confirmed that the City would be issuing a Request for Qualifications and intended to award a contract for comprehensive plan revisions sometime in March 2006. He said the City would continue to move forward but noted that the deadline for completion of the revisions was not realistic. He said that the City is hoping to have the revisions made by September or October.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the comprehensive plan adopted by the City of Petersburg on February 13, 2001 be found inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations, and further that the City of Petersburg undertake and complete the four recommendations contained in the staff report no later than October 30, 2006.

SECOND: Ms. Roberts

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DISCUSSION: None

VOTE: Motion carried unanimously

City of Suffolk - Review of previous conditions

Ms. Baldwin gave the report for the City of Suffolk. She recognized Robert Bob Goumas, Principal Long Range Planner with the City.

In March 1998, the City of Suffolk adopted its comprehensive plan. In December 2000, the Board found the City's comprehensive plan consistent with five conditions and directed Suffolk to undertake and complete the recommendations by December 31, 2003. In September 2003, the City requested an extension from December 31, 2003 until June 30, 2005. The City was requesting the extension because it was in the process of updating the entire comprehensive plan.

Suffolk has contracted with a consulting firm and is making progress towards undertaking and completing the recommendations. However, since the City has already been granted a previous extension request and because that date of June 30, 2005 is well past over, it is staff's recommendation that the comprehensive plan adopted by the City of Suffolk on March 25, 1998 be found inconsistent with the Act and Regulations. Furthermore, staff recommends that the City of Suffolk undertake and complete the five recommendations contained in the staff report no later than June 30, 2006.

Mr. Goumas said that the City had no problem with the deadline and that action is anticipated within the next 90 days.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the comprehensive plan adopted by the City of Suffolk on March 25, 1998 be found inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations, and further that the City of Suffolk undertake and complete the five recommendations contained in the staff report no later than June 30, 2006.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews: Compliance Evaluation

Accomack County - Review of previous conditions

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Ms. Smith gave the report for Accomack County. She recognized Mr. James McGowan, County Director of Planning.

Accomack County underwent a compliance evaluation in 2004, with the Board establishing a compliance deadline of June 30, 2005 to address four conditions; this deadline was extended to December 31, 2005 in June. The County has addressed three of these four conditions: they now require buffer mitigation plans for buffer impacts; they are now using a BMP database to track stormwater BMPs; and they require the submission and review of WQIAs for RPA development projects. The one condition that has not been fully addressed is the development and implementation of a septic pump-out program. However, grant funds to address this condition were made available to the County and work towards meeting this condition is underway. Given that work on this grant is to end by September, staff recommends setting September 30, 2006 as the deadline for this condition to be addressed.

Mr. McGowan thanked the Board for understanding the delay. He noted that he assumed his position with the County on August 1, 2005.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Accomack County's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulation and further that the County be directed to undertake and complete the one recommendation contained in the staff report no later than September 30, 2006.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

Henrico County - Review of previous conditions

Mr. Helmboldt gave the report for Henrico County. He recognized Keith White and Jeff Perry of Henrico DPW.

On September 20, 2004 the Chesapeake Bay Local Assistance Board set a deadline of September 30, 2005 for the County to undertake and complete the three recommendations included in the staff report.

Department staff noted that the County's Plan of Development process did not include the submission of a WQIA as required in their ordinance. However, the County noted that their review process included measures to require submission of the information that would otherwise

be included in a WQIA. As a result of their POD process, they in effect require elements of a WQIA to be submitted for projects that would not otherwise require a WQIA under their Bay Act ordinance.

On December 14, 2005 the Henrico County Board of Supervisors adopted amendments to their Environment section of the County Code that reflect the actual process in place that the County utilizes to ensure adequate water quality measures are addressed. Mr. Helmboldt said it is staff's opinion that this recommendation has been adequately addressed.

During the compliance evaluation staff noted that it appeared that the County's E&S inspection and enforcement activities were inconsistent. Henrico County has created a database of E&S Control enforcement activities and any follow-up actions that result. Included in this database is a tracking mechanism for E&S Control inspections.

The County noted that in some cases problems relating to E&S Control violations are addressed through an informal process that often results in compliance and that might not appear in the project files, however the database allows tracking of inspection and enforcement activity. Mr. Helmboldt said that it is staff's opinion that this recommendation has been adequately addressed.

The responsibility for managing the County's pump-out notification process is being transferred from the County's Planning Department to their Public Works Department so that all aspects of the County's Bay Preservation Act program rests with one department.

The County has determined that this will require additional staffing and resources and has prepared a request for these resources for this year's budget.

Henrico County chose to address the pump-out notification process by utilizing a number of GIS layers and related database information and have created a very detailed process to accurately identify the properties that are affected by the pump-out requirements.

However, Mr. Helmboldt said that staff opinion is that this condition has not been fully addressed, since the County is not currently actively notifying property owners of the pump-out requirement.

Mr. Helmboldt said that staff recommends that certain aspects of Henrico County's implementation of its Bay Act program do not fully comply with the Act and the Regulations and that the County be given until June 30, 2006 to complete the one remaining recommendation in this report.

Mr. Perry said that the delay was caused due to a staff vacancy that was filled on July 1. He said that the County has a system set up and the Department of Public Works has submitted a budget request for the upcoming fiscal year that will provide funding for the dedicated staff position. As a result of budget constraints Mr. Perry stated that a more realistic date for implementation was August.

Ms. Smith said that a September 30, 2006 date would be agreeable.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Henrico County's Phase I program implementation do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and that the County be directed to undertake and complete the one recommendation contained in the staff report no later than September 30, 2006.

SECOND: Ms. Macaulay

DISCUSSION: None

VOTE: Motion carried unanimously

York County - Review of previous condition

Ms. Miller gave the report for York County.

On June 20, 2005 the Board conducted a Compliance Evaluation Condition review and found York County's Phase I program not fully compliant with one recommendation to be addressed by September 30, 2005. The recommendation required amendments to the County's subdivision ordinance to be consistent with definitions and section numbers referenced in the zoning ordinance and the County's Chesapeake Bay Preservation Areas Ordinance. Revisions were adopted on December 20, 2005, and have been reviewed by the Department. It is staff's opinion that the changes adequately address the recommendation and that York County's implementation of its Phase I program should be found compliant.

Ms. Miller said that it should also be noted that all references (3) to the "Environmental Management Areas Ordinance" in the staff report would be changed to read, "Chesapeake Bay Preservation Areas Ordinance."

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find York County's implementation of its Phase I program compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

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Town of Windsor - Deadline extension request to June 30, 2006

Ms. Baldwin gave the report for the Town of Windsor. She recognized Mark Drumheller with the Town.

The Town of Windsor is requesting a six-month extension to address the three recommendations from its initial compliance evaluation conducted in 2004. The extension would change the deadline from December 31, 2005 to June 30, 2006.

As noted in the staff report, the Town spent several months without an assistant zoning administrator and during that time, no progress was made towards meeting the recommendations. The Town has recently hired a new full time assistant zoning administrator who, in a letter dated November 17, 2005, outlined a detailed plan on how the Town will address the outstanding conditions.

Since it appears that the Town clearly intends to address the recommendations and within a time frame that is appropriate given its previous staff shortages, its staff opinion that the Town's extension be granted.

Mr. Drumheller thanked the Board for considering the extension.

MOTION: Ms. Macaulay moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board approve the Town of Windsor's request for a six-month deadline extension, from December 31, 2005 to June 30, 2006, to address the recommendations from the Fall 2004 compliance evaluation.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

Other Business

Ms. Salvati noted that the City of Virginia Beach program compliance evaluation was scheduled to be on the agenda for this meeting but staff needed information from the Division of Soil and Water regarding to the City's stormwater management program prior to completing the evaluation.

The next meeting of the full Board has been moved to April 3, 2006.

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Adjourn

Being no further business, the meeting was adjourned.

Respectfully submitted,

David C. Froggatt
Chair

Joseph H. Maroon
Director